

AG Jennings, DOJ Fight Corporate Abuse of Class Action Settlements

Delaware leads bipartisan coalition opposing attempt to weaponize class action settlements against state law enforcement actions

Attorney General Kathy Jennings announced Monday that Delaware has filed an amicus brief in a Minnesota federal court opposing a corporation's attempt to weaponize a class action settlement against a parallel law enforcement action by the Minnesota Attorney General. Delaware's brief was also signed by the attorneys general of 35 other states and the District of Columbia.

Following a lengthy investigation, Minnesota's Attorney General filed suit in 2017 against CenturyLink, Inc. for unlawful business practices, alleging the Louisiana-based telecommunications provider had harmed Minnesota consumers through fraudulent and deceptive billing. Trial in Minnesota's lawsuit is scheduled for March 2020.

In addition, numerous private litigants have filed class action lawsuits against CenturyLink in connection with the same conduct, which is alleged to have harmed millions of consumers across the United States. In early 2018, the Judicial Panel on Multidistrict Litigation consolidated the private class action lawsuits before Judge Michael J. Davis in the United States District Court for the District of Minnesota.

In October, CenturyLink announced that it had reached a tentative settlement with the private litigants in federal court. Under the proposed settlement, consumers would only receive a small fraction of the losses CenturyLink is alleged

to have caused. CenturyLink then asked Judge Davis to bar the Minnesota Attorney General's state court restitution claims against it, arguing that any further relief ordered by the state court would be "duplicative" of payments consumers will receive under the private settlement.

"Class action settlements aren't get-out-of-jail-free cards," said Attorney General Jennings. "This issue is bigger than any one state or business; this is about giant corporations playing by a different set of rules than everyone else. The injunction that CenturyLink has requested would undermine state consumer protection laws and send a message that corporations can violate the law and unilaterally avoid full accountability by leveraging private settlements to squeeze out law enforcement efforts. I'm grateful to my colleagues for standing up to say we won't let that happen."

[Delaware's brief](#) makes four principal arguments:

1. CenturyLink's request is unconstitutional under the Eleventh Amendment
2. Additional federal statutes bar the Courts from granting CenturyLink's request
3. The approach advocated for by CenturyLink would incentivize class action settlement abuse, diminish recoveries for fraud victims, and enable bad actors to keep more of the proceeds of their misconduct.
4. State attorneys general are not represented in class actions and are legally separate from private litigants

The Minnesota Attorney General filed a separate brief opposing CenturyLink's proposal on November 15. A hearing on the matter will be held before Judge Davis on December 11.

Delaware's amicus brief was also signed by the attorneys general of: Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts,

Michigan, Mississippi, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, Wyoming, and the District of Columbia.

Delaware's work in this matter was led by Deputy Attorney General David Weinstein, with assistance from Fraud Division Director Owen Lefkon, Director of Impact Litigation Christian Wright, and Deputy Attorney General Michael Clarke.